

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

JM4 TACTICAL, LLC; and JAMES
CHADWICK MYERS,
Plaintiffs,

v.

HER TACTICAL, LLC; E & R LLC d/b/a
HER TACTICAL; VICKY ARLENE
JOHNSTON; and BLAKE CHEAL,

Defendants.

**PATENT CASE PROPOSED AMENDED
SCHEDULING ORDER**

Case No. 1:22-cv-00121-MWF-MAR

District Judge Dale A. Kimball
Magistrate Judge Dustin B. Pead

The Parties have filed the following proposed amended scheduling order reflecting the Court's ruling in Dkt. No. 12692. The Court schedules the following matters. The parties may not modify the times and deadlines set forth herein without the approval of the Court and on a showing of good cause pursuant to Fed. R. Civ. P. 6.

**ALL DEADLINES ARE SET FOR 11:59 P.M. ON THE DATE INDICATED UNLESS
EXPRESSLY STATED TO THE CONTRARY**

1.	PRELIMINARY MATTERS/DISCLOSURES	DATE
a.	Plaintiff's Accused Instrumentalities disclosure due [LPR 2.1]	11/22/23
b.	Plaintiff's Rule 26(a)(1) initial disclosure due [LPR 2.2]	12/8/23
c.	Defendant's Rule 26(a)(1) initial disclosure due [LPR 2.2]	12/15/23
d.	Rule 26(f)(1) Conference held and discovery begins [LPR 1.2, 1.3]	12/22/23
e.	Attorney Planning Meeting Report and Proposed Scheduling Order submitted [LPR 1.2]	10/27/23 (court ordered, dkt 30)

- | | | |
|----|--|----------------------------|
| f. | Plaintiff serves Initial Infringement Contentions [LPR 2.3] | 1/19/24 |
| g. | Defendant serves Initial Non-Infringement, Unenforceability, and Invalidity Contentions
<i>If no infringement claims</i> , Plaintiff serves Initial Non-Infringement, Unenforceability, and Invalidity Contentions [LPR 2.4, 2.6] | 2/3/24 |
| h. | Final Infringement Contentions [LPR 3.1] | <u>3</u> 6/13/2 <u>5</u> 4 |
| i. | Final Unenforceability and Invalidity Contentions [LPR 3.1] | <u>3</u> 6/27/24 <u>5</u> |
| j. | Final Non- Infringement, [LPR 3.2] | <u>4</u> 7/11/2 <u>5</u> 4 |

2. DISCOVERY LIMITATIONS **NUMBER**

- | | | |
|----|---|----|
| a. | Maximum number of depositions ¹ by Plaintiff(s) | 10 |
| b. | Maximum number of depositions ² by Defendant(s) | 10 |
| c. | Maximum number of hours for each deposition (unless extended by agreement of parties) | 7 |
| d. | Maximum interrogatories ³ by any party to any party | 25 |
| e. | Maximum requests for admissions by any party to any party | 75 |
| f. | Maximum requests for production by any party to any party | 75 |

The Parties shall handle discovery of electronically stored information as follows:

- g. The parties shall handle a claim of privilege or protection as trial preparation material asserted after production as follows: *Include provisions of agreement to obtain the benefit of Fed. R. Evid. 502(d).*

¹ Excluding depositions of experts.

² Excluding depositions of experts.

³ An interrogatory or multiple interrogatories seeking the basis of a party's affirmative defenses, infringement contentions, or invalidity contentions counts as one interrogatory regardless of the number of affirmative defenses alleged or the number of infringed or invalid claims alleged. A party may object to the time of discovery as set forth in LRP 1.7.

The Parties agree to be bound by the Standard Protective Order of the District of Utah,
https://www.utd.uscourts.gov/sites/utd/files/Standard_Protective_Order.pdf

DATE

- | | | |
|----|--|-------------------------|
| h. | Deadline to serve written discovery before claim construction [R. 34]: | <u>47/11/254</u> |
| i. | Close of fact discovery before claim construction [LPR 1.3(a)]: | <u>58/22/254</u> |
| j. | Disclosure of intent to rely on opinions of counsel and materials in support [LPR 1.3(c)]: | 7 days after CC ruling |
| k. | Deadline to file motion for additional discovery [LPR 1.3(b)]: | 14 days after CC ruling |

3. AMENDMENT OF PLEADINGS/ADDING PARTIES⁴

DATE

- | | | |
|----|--|-----------------|
| a. | Last day to file motion to amend pleadings | <u>123/7/24</u> |
| b. | Last day to file motion to add parties | <u>123/7/24</u> |

4. CLAIM CONSTRUCTION PROCESS

DATE

- | | | |
|----|---|------------------------------------|
| a. | Parties exchange proposed claim terms and claim constructions for construction [LPR 4.1(a)] | <u>47/25/254</u> |
| b. | Reach agreement to submit no more than 10 terms for construction [LPR 4.1(b)] | <u>58/1/254</u> |
| c. | Parties file Cross-Motions for Claim Construction and Joint Appendix [LPR 4.2(a) & (b)] | <u>58/29/254</u> |
| d. | Parties file Simultaneous Responsive Claim Construction Briefs [LPR 4.2(c)] | 96/21/254
(before the holidays) |
| e. | | |

⁴ Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

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|----|---|--|
| | Joint Claim Construction Chart & Joint Status Report Due [LPR 4.2(f)] | 7/10/5/25
(after the holidays) |
| f. | Tutorial for Court [LPR 4.4] | 2:30 p.m.
7/10/10/25
4 |
| g. | Parties exchange exhibits [LPR 4.3] | 7/10/17/25
4 |
| h. | Claim Construction Hearing ⁵ [LPR 4.3] | TBD |

5. EXPERT DISCOVERY

- | | | |
|----|--|----------------------------|
| a. | Parties bearing burden of proof [LPR 5.1(b)] | 28 days after
CC ruling |
| b. | Counter disclosures: | 42 days after
CC ruling |
| c. | Counter reports [LPR 5.1(c)] | 42 days after
CC ruling |
| d. | Close of expert discovery [LPR 5.2] | 87 days after
CC ruling |

6. DISPOSITIVE MOTIONS

- | | | |
|----|---|--------------------------------------|
| a. | Deadline to file dispositive motions required to be filed with claim construction [LPR 6.2] | 58/29/25
4 |
| b. | Deadline to file opposition to dispositive motions filed with claim construction [LPR 6.2] | 69/21/25
4
10/10/24 |
| c. | Deadline to file reply to dispositive motions filed with claim construction [LPR 6.2] | 119 days after
CC ruling |
| d. | Deadline for filing dispositive or potentially dispositive motions [LPR 6.1] | 105 days after
CC ruling |
| e. | Deadline for filing partial or complete motions to exclude expert testimony | |

DATE

⁵ Parties should contact the Court to set the date for the Claim Construction Hearing

**7. SETTLEMENT/ALTERNATIVE DISPUTE
RESOLUTION/ OTHER PROCEEDINGS**

- | | | |
|----|---|---|
| a. | Likely to request referral to a Magistrate Judge for settlement conference: | Yes/ <input checked="" type="checkbox"/> No |
| b. | Likely to request referral to court-annexed arbitration: | Yes/ <input checked="" type="checkbox"/> No |
| c. | Likely to request referral to court-annexed mediation: | Yes/ <input checked="" type="checkbox"/> No |
| d. | Last day to seek stay pending re-examination [LPR 3.5] | 10/11/23 |
| e. | The parties will complete private mediation/arbitration by: | 00/00/00 |
| f. | Evaluate case for Settlement/ADR on | 7 days after
CC ruling |
| g. | Settlement probability: | Poor |

Plaintiff is directed to file a new scheduling order within 14 days of ruling on claim construction. The Court will set trial deadlines in that order or through a case management conference.

8. OTHER MATTERS

All Motions in Limine should be filed well in advance of the Final Pretrial Conference.

Signed _____ ~~October 2, 2024.~~

BY THE COURT:

U.S. Magistrate Judge